

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HELEN A. RUNGE,	:	
Plaintiff	:	
v.	:	No. 05-10849-RGS
	:	(Judge Stearns)
WALTER J. KELLY, et al.	:	CIVIL ACTION
Defendants	:	JURY TRIAL DEMANDED

MEMORANDUM OF REASONS IN SUPPORT OF MOTION
FOR SUBSTITUTION OF PLAINTIFF

Dorothy Stanley ("Stanley"), by and through her counsel, respectfully submits this Memorandum of Reasons in Support of the Motion for Substitution of Plaintiff.

I. FACTUAL BACKGROUND

Helen A. Runge ("Runge" or "Plaintiff") filed her original Complaint on April 27, 2005, pleading counts sounding both in federal and state law. Counts I and II of the original Complaint were federal law claims, which were dismissed by this Court's Order dated January 23, 2006. Jurisdiction remains with this Court due to diversity, although the federal question jurisdiction counts were dismissed. By Court Order entered July 28, 2006, Runge was permitted to file an Amended Complaint, which Runge filed on August 7, 2006. By Court Order entered January 5, 2007, Runge was permitted to file her Second Amended Complaint, which Runge filed on January 8, 2007.

Stanley now seeks to be substituted as Plaintiff in this matter. Runge's death has been suggested upon the record and the Motion for Substitution of Plaintiff has been made in a timely manner, as required by the Federal Rules of Civil Procedure. Plaintiff herein incorporates by reference the Motion for Substitution of Plaintiff.

II. REASONS WHY MOTION SHOULD BE GRANTED

Federal Rule of Civil Procedure 25(a)(1) permits this Court to order substitution of a party if a party dies and the claim is not extinguished. Any party or successors or representatives of the deceased party may motion for substitution of the deceased party. F.R.C.P. 25(a)(1). The motion must be made within 90 days after the death is suggested on the record, or the action shall be dismissed. F.R.C.P. 25(a)(1).

Runge died on January 15, 2007 and left a last will and testament. Her last will and testament was duly admitted to probate on January 29, 2007 in the General Court of Justice, Superior Court Division of North Carolina. Stanley was issued letters testamentary on January 29, 2007 and began acting, and is still acting, as executrix for Runge's estate. A Suggestion of Death Upon the Record Under Rule 25(a)(1) regarding Runge was filed with this Court on January 29, 2007.

Stanley, as the executrix of Runge's estate, is a proper representative of the deceased party. The claims of the deceased Runge have survived her death against all Defendants. Within the 90-day period following the filing of the Suggestion of Death on January 29, 2007, Stanley filed a timely Motion for Substitution of Plaintiff on March 23, 2007. Accordingly, the requirements of F.R.C.P. 25(a)(1) have been met in order for substitution of Plaintiff to be allowed by this Honorable Court.

III. CONCLUSION

For the foregoing reasons, the Motion for Substitution of Plaintiff seeking to substitute Stanley as Plaintiff in this matter should be granted.

Respectfully submitted,

LATSHA DAVIS YOHE & MCKENNA, P.C.

Dated: March 26, 2007

By /s/ Glenn R. Davis
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Attorneys for Plaintiff, Helen A. Runge
and Dorothy Stanley, Executrix of the Estate of
Helen A. Runge

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon the attorney of record for each party by electronic transmission.

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/s/ Glenn R. Davis

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